

CEDRIC ATKINS §
v. § CIVIL ACTION NO. 6:13cv516
DIRECTOR, TDCJ-CID §

The Petitioner Cedric Atkins, proceeding *pro se*, filed this application for the writ of habeas corpus challenging the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Atkins was convicted of possession of a controlled substance in a drug-free zone on October 8, 2009, receiving a sentence of 10 years in prison. The trial court entered a *nunc pro tunc* order on March 22, 2011, correcting the judgment of conviction to reflect the proper offense and the correct statute number.

Atkins did not appeal, but sought state habeas corpus relief on July 3, 2012. This was denied on September 5, 2012. Atkins filed his federal habeas corpus petition on June 25, 2013, complaining that he was convicted and sentenced for violating a provision of the Penal Code which did not exist. He contended that the State could not unilaterally modify the plea bargain agreement so as to correct the error in identifying the statute and that he received ineffective assistance of counsel. The Respondent filed an answer arguing that Atkins' claims are barred by the statute of limitations. Atkins did not file a response to the answer.

After review of the pleadings, the Magistrate Judge issued a Report recommending that Atkins's petition be dismissed and that Atkins be denied a certificate of appealability *sua sponte*. A copy of this Report was sent to Atkins at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 12) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED with prejudice as barred by the statute of limitations. It is further

ORDERED that the Petitioner Cedric Atkins is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 4th day of December, 2014.

A handwritten signature in black ink, appearing to read 'Leonard Davis', with a large, stylized loop at the end.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**